STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

Supreme Court No 155184

Court of Appeals No. 328246

-vs-

Lower Court Case No. 15-0181-01 -FC

RYAN LASHAWN CHATMAN

Defendant-Appellee.
_____/

Wayne County Prosecutor
Attorney for Plaintiff-Appellant
_____

Gary David Strauss (P48673)
Attorney for Defendant-Appellee
_____

DEFENDANT-APPELLEE'S SUPPLEMENTAL BRIEF

PROOF OF SERVICE

BY: Gary D. Strauss (P48673)
Strauss & Strauss, PLLC
Attorney for Defendant-Appellee
306 S. Washington Ave, Ste 220
Royal Oak, MI 48067
(248) 584-0100

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Argument

I. The Court of Appeals was correct in holding that the trial judge's questioning of witnesses constituted plain error and pierced the veil of judicial impartiality warranting reversal of defendant's convictions and a new trial.

It is not apparent whether this Court's Order directing the parties to file supplemental briefs tacitly gave credence to the People's position that this Court went too far in *People v Stevens*, 498 Mich 162; 869 NW2d 233 (2015). The People argue that where a trial judge exhibits an appearance of partiality, an abuse of discretion standard should be employed even when error is preserved and that any error emanating from the judicial display of partiality does not constitute structural error. The People cite several cases from other states and federal jurisdictions in support of their argument. As Defendant-Appellant stated in its opposition to the application, this is the wrong case to make that argument. The Court of Appeals recognized in this case that the error was unpreserved and held that the judge's interference constituted plain error affecting defendant's substantial rights and the fairness of the trial.

In *Stevens, supra*, this Court cited *McMillan v Castro*, 405 F3d 405 (CA6, 2005). In *McMillan*, the Sixth Circuit reviewed the judge's conduct for an abuse of discretion. While the panel note that the trial judge was free to ask questions to clarify testimony, the Court stated that:

> the district judge must 'always be calmly judicial, dispassionate and impartial. He should sedulously avoid all appearances of advocacy as to those questions which are ultimately to be submitted to the jury.' *Hickman*[1], 592 F.2d at 933 (quoting *Frantz v. United States*, 62 F.2d 737, 739 (6th Cir.1933)).
>
> * * *
>
> Actual impartiality as well as the appearance of impartiality is 'critical because the judge's every action is likely to have a great influence on the jury.' Nationwide[2], 174 F.3d at 805.
>
> * * *

---

[1] *United States v Hickman*, 592 F2d 931, 933 (6th Cir,1979)

[2] *Nationwide Mut Fire Ins Co v Ford Motor Co*, 174 F3d 801, 805 (6th Cir, 1999).

> In sum, while we employ an abuse of discretion standard in determining whether the district court's conduct was hostile or biased, once we have concluded that judicial misconduct did occur, reversal is automatic due to the structural nature of the error. See *Nationwide*, 174 F.3d at 805; see also *Arizona v. Fulminante*, 499 U.S. 279, 309, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991) (listing judicial bias as an example of errors not subject to harmless error analysis). Thus, the threshold inquiry is whether, with reference to a range of acceptable, though not necessarily model, judicial behavior, the district court's conduct falls demonstrably outside this range so as to constitute hostility or bias. *McMillan*, 405 F3d at 409-410.

The People avoided discussion of *McMillan* where the Sixth Circuit recognized that "[a]ctual impartiality as well as the appearance of impartiality is critical because the judge's every action is likely to have a great influence on the jury." *McMillan*, 405 F3d at 409. The People suggest that the Court of Appeals engaged in speculation by inferring bias based upon the trial judge's repeated reinforcement of the prosecution's theory and questions eliciting potentially self-serving and damaging testimony that nobody had a gun or any other weapon except for Mr. Chatman. The People appear to assert that it must be crystal clear that a judge wants to send a defendant to prison in order to find bias that *might* warrant reversal. Mr. Chatman asserts that the approach outlined in *Stevens* presents the proper balance for assessing a trial judge's conduct. Where, as here, the judge's numerous questions painted an extremely unflattering picture of Mr. Chatman in comparison to the victim, the judge's intervention strikes at the very heart of our judicial system.

In his dissent, Judge Gadola writes that "while the trial judge's questions were in large measure unnecessary and arguably inappropriate, I cannot conclude that the court improperly influenced the jury by creating an appearance of advocacy or partiality." (*People v Chatman*, slip opinion at 11). Mr. Chatman asserts that the bar should not be set so low. It should not be such a tricky proposition for a trial judge to refrain from questioning witnesses, except when clarification is necessary for the jury to do their job.

Attorneys are often surprised at the factors that led to a jury's verdict. It is not uncommon to discover that the jury did not strictly confine their analysis to the rules of evidence and jury instructions. The People write "]t]hat no one else possessed a gun did

not affect either defendant's or the victim's version of events." (Plaintiff's Application at fn 27). A display of judicial partiality does not have to exhibit a direct attack on a defendant's testimony. In this case, the trial judge's questions directly effected the jury's perception of Chatman and Lawless. As the *McMillan* Court noted "the appearance of impartiality is critical because the judge's every action is likely to have a great influence on the jury." *McMillan*, 405 F3d at 409. The Court of Appeals' ruling was correct.

In *People v Bedsole*, 15 Mich App 459; 166 NW2d 642 (1969), the Court of Appeals reversed and remanded the case for a new trial where the trial judge made extended references to an extramarital affair between defendant and one of his witnesses which did not concern facts material to the case. In *Bedsole*, the defendant was convicted of statutory rape with regard to his step-daughter. The trial judge engaged in questioning the defendant's girlfriend, Miss Freeman, about when she found out that Mr. Bedsole was married while she and Mr. Bledsole were having an affair. Later in the trial, when the prosecutor was questioning another witness and referred to Miss Freeman as Mrs. Freeman, the trial judge stated "[t]hat happens to be Miss Freeman, not Mrs. Freeman."

As in the present case, no objections were made to the judge's questions. Because Miss Freeman was an alibi witness, the Court stated that:

> Material questions from the court would have been concerned with if, when, and where, they were together, and not their marital status or lack of it. The fact that the court went beyond materiality into collateral matters leads us to believe that any jury naturally concerned with the current mores of society would have been influenced to the detriment of defendant's case. *(Bedsole*, 15 Mich App at 462, citing *People v Young*, 364 Mich 554; 111 NW2d 870 (1961))

In the present case, the trial judge was intent on establishing that Mr. Chatman was the only person with a gun in the house and that he was shady because he used an alias. As was true in *Bedsole*, because Mr. Chatman admitted that he shot Mr. Lawless, the judge's questions were not material to any issue in the case. The Court of Appeals also noted that Mr. Bedsole was unfairly prejudiced by the testimony *if the jury* was influenced by the

testimony regarding an extramarital affair. It is doubtful that the jurors were asked how they felt about extramarital affairs during voir dire. However, the fact that the judge put the defendant in an unflattering light was enough to require reversal.

It is safe to assume that jurors in Wayne County would be as concerned with a person waving a gun around at a party when everybody else allegedly was unarmed as the Genesse County jurors might have been with regard to an extramarital affair in the late 1960s. To make matters worse, in *Bedsole*, it was objectively true that Bedsole was married while he and *Miss* Freeman were having an affair. In the present case, the trial judge invited the witnesses to speculate and/or deliver self-serving testimony. The trial judge asked Mr. Lawless "[o]n this particular day when you went to Karla Mitchell's house, did you have any weapon on you? Did you have a gun, a knife, anything?" Besides the immateriality of the question, what are the odds that a witness would admit that he had a weapon and/or ready access to one? The judge then asked whether Mike appeared to have a weapon. After Lawless answered "no," the judge rhetorically asked "[s]o the only person that had a weapon in this kitchen was Mr. Chatman?" The decision in *Bedsole* is contrary to the People's assertion that the trial judge's intervention "did not affect either defendant's or the victim's version of events" because of the immateriality of the questions. *Bedsole* noted that collateral matters "would have . . . influenced [the jury' s decision] to the detriment of defendant's case."

The Court of Appeals correctly concluded that:

> The judge's questions however, suggested that the defense theory was false. They highlighted to the jury Lawless's previous answers that he was unarmed, that defendant was the aggressor and that he had not encroached any less than ten feet toward defendant. Diametric to defendant, Lawless was positioned as concerned about gun safety, the safety of others and as someone who had never fired a gun. (*Chatman*, slip opinion at 7)

The People reference a Seventh Circuit case, *People v Barhardt*, 599 F3d 737 (CA7, 2010), which involved federal wire fraud charges. The *Barhardt* court stated that in "the evidence of guilt is very strong. We are confident that the judge's questions to the witnesses,

though they crossed the line, did not affect the outcome of this trial." *Barhardt*, 599 F3d at 746. In addition to the questionable applicability of a Seventh Circuit case that did not employ the standards set forth in *Stevens*, the evidence of guilt was not "very strong" in the present case. Mr. Lawless was extremely inebriated and didn't recall whether he threw a chair at Mr. Chatman. Further, the impact of the judge's intervention was magnified by the fact that this was an extremely short trial. Although Judge Gadoloa refers to a "3-day trial" in his dissent, while this is technically true, the first day of trial was entirely consumed by voir dire and over ½ of the last day of trial was devoted to closing argument and jury instructions.

The People also rely on *US v Marinovich*, 810 F3d 232 (CA 4, 2016). *Marinovich* was a four-week jury trial involving conspiracy, wire fraud, mail fraud and money-laundering. In finding that the district court's improper questioning did not warrant reversal, the Court stated that:

> Appellant has not demonstrated, and we cannot conclude, that the district court's comments throughout several weeks of trial impacted the trial's outcome. This is evident, in part, by the jury's divided verdict. . . although the district court's interferences in this case went beyond the pale, in light of the plain error standard of review and the overwhelming evidence against Appellant, the district court's conduct did not create such an impartial and unfair environment as to affect Appellant's substantial rights and undermine confidence in the convictions. *Marinovich*, 810 F3d at 242.

This was an extremely short trial that hinged upon whether the jury believed Chatman's or Lawless's version of events. The Court of Appeals was correct in finding that the judge's questioning deprived Mr. Chatman of a fair trial.

Relief Requested

For the reasons set forth in this brief, Defendant-Appellee requests that this Court deny the People's application for leave to appeal.

Respectfully submitted,

/s/Gary David Strauss P48673

Proof of Service

Gary D. Strauss, states that on July 21, 2017, he served a copy of the supplemental brief and proof of service upon a representative of the Wayne County Prosecutor's office via the True Filing System.

/s/Gary David Strauss